

**COURT OF APPEALS OF OHIO**

**EIGHTH APPELLATE DISTRICT  
COUNTY OF CUYAHOGA**

ASCENSION BIOMEDICAL, LLC,	:	
Plaintiff-Appellant,	:	
	:	No. 111676
v.	:	
THE OHIO DEPARTMENT OF COMMERCE,	:	
Defendant-Appellee.	:	

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**JOURNAL ENTRY AND OPINION**

**JUDGMENT: AFFIRMED**

**RELEASED AND JOURNALIZED: February 16, 2023**

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Administrative Appeal from the Cuyahoga County Court of Common Pleas  
Case No. CV-20-934612

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***Appearances:***

Frantz Ward LLP, Thomas G. Haren, Patrick A. Walsh,  
and Gregory R. Farkas *for appellant.*

David Yost, Ohio Attorney General, Brian Honen, Senior  
Assistant Attorney General, *for appellee.*

MICHAEL JOHN RYAN, J.:

{¶ 1} In this administrative appeal, plaintiff-appellant Ascension Biomedical, LLC (“Ascension”) appeals from the trial court’s June 10, 2022 judgment affirming the final order of defendant-appellee the Ohio Department of Commerce (“the department”). After a thorough review of the facts and pertinent law, we affirm.

### **Factual Background and Procedural History**

{¶ 2} In 2016, then-Governor John Kasich signed House Bill 523 (“H.B. 523”), creating the Medical Marijuana Control Program, which legalized medical marijuana in Ohio. H.B. 523 is codified in R.C. Chapter 3796. Along with the Ohio State Board of Pharmacy (“the board”), the department is responsible for administering the program. R.C. 3796.02. The department and the board established the rules and standards for the program. R.C. 3796.03 and 3796.04. The department is responsible for the licensure of medical marijuana cultivators, processors, and testing laboratories. *Id.*

{¶ 3} In regard to licensure, the department was responsible for establishing the rules and standards for the facilities. *Id.* Specifically, the department was authorized to adopt rules that established application procedures for obtaining a license, as well as the conditions that need to be met in order to be eligible for licensure. R.C. 3796.04(B). Under this authority, the department promulgated administrative rules that set forth the minimum requirements that a

prospective processor applicant must satisfy to obtain a license. Ohio Adm.Code 3796:2-1-02(B)(2)-(6) and 3796:3-1-03(B)(1)-(5).

**{¶ 4}** Further, R.C. 3796.09 governs the application for licensure to process, cultivate, or test medical marijuana. The statute provides that the department may only issue a license to an applicant if all of the requirements set forth in R.C. 3796.09(B)(1)-(6) have been met. R.C. 3796.09(B)(6) provides that an applicant for licensure shall meet all eligibility conditions established in the department's rules promulgated under R.C. 3796.03. The initial application rules for obtaining a medical marijuana provisional processor license are set forth in Ohio Adm.Code 3796:3-1-02.

**{¶ 5}** After the department set its eligibility requirements, it compiled a "Request for Applications and Instructions Packet" ("RFA") for parties who were interested in operating as a medical marijuana processor. The department then accepted an unlimited number of applications for 40 total processor licenses during a ten-day period in December 2017.

### **Initial Application**

**{¶ 6}** Ascension timely filed an application for a processor license. The application consisted of "section 1" and "section 2." Section 1 required the submission of certain forms that were evaluated on a pass or fail basis. Section 2 required each applicant to provide narrative statements concerning five separate plans: (1) a business plan, (2) an operations plan, (3) a quality assurance plan, (4) a

security plan, and (5) a financial plan. Section 2, which was competitively scored, is at issue in this case.

**{¶ 7}** The RFA detailed the minimum requirements for each plan as set forth in Ohio Adm.Code 3796:3-1-02(B)(2)-(6). In the “evaluation criteria” section of the RFA, the department detailed the page limit for each plan narrative, the minimum and maximum scores that could be awarded for each section, and the scoring breakdown for each of the five plans.

**{¶ 8}** The department scored each of the section 2 plans individually via three-person scoring teams for each of the five plans. The teams used standardized score sheets developed by the department to track which criteria each applicant had adequately demonstrated under the section 2 narratives. Each score sheet was divided into separate pages for each of the different components of the plan. Each page was further subdivided into “individual criteria” that scoring team members marked as a “yes” or a “no” depending on whether the applicant was compliant with the instructions and adequately demonstrated the required information within the narrative. Each scorer gave each plan its own numeric score based on how many criteria the applicant met on each page.

**{¶ 9}** The criteria on each page of the scoresheets included the mandatory criteria under Ohio Adm.Code 3796:3-1-02(B)(2)-(6), which applied to processor license applications, and Ohio Adm.Code 3796:3-1-03(B)(1)-(5), which detailed the criteria to be considered in evaluating the applications.

**{¶ 10}** In addition to the mandatory criteria, Ohio Adm.Code 3796:3-1-03(B)(6) provides that the department could consider additional information that went above and beyond the minimum requirements for a particular plan. An applicant could only be awarded the additional points if it first met all of the minimum criteria, however.

**{¶ 11}** The RFA informed the applicant that the operations plan and quality assurance plan were each worth up to a maximum of 30 points; the security plan was worth up to 20 points; and the business plan and financial plan were each worth up to a maximum of ten points. An applicant had to score at least 60 points to be considered for a provisional license. Further, as part of the scoring, an applicant had to achieve a minimum score that equaled 60 percent of the total points that could be awarded for each plan.

**{¶ 12}** If an applicant did not achieve the minimum points required for any of the five plans, the applicant would not receive a provisional processor license. If an applicant met the minimum requirements, its application would be ranked with the other qualifying applicants to determine which applicants had the highest scores.

**{¶ 13}** The department received 104 applications for the 40 licenses. After completing the initial application process, the department determined that only 14 of the applicants met the minimum qualifications; those 14 applicants were awarded licenses.

**{¶ 14}** Ascension met the mandatory minimum scores on its business plan, operations plan, and financial plan in the initial phase. Ascension did not receive the required minimum scores on its quality assurance plan and security plan, however. A required minimum score of 18 points was required for the quality assurance plan and Ascension received a score of 14. A required minimum score of 12 points was required for the security plan and Ascension received a score of zero. Thus, Ascension was not awarded a license in the initial application phase.

### **Clarification Phase**

**{¶ 15}** The RFA provided that if all 40 licenses were not awarded during the initial application phase, the department could request modifications from the applicants who were not awarded a license. After the initial application phase, 26 licenses remained and the department issued a “clarification request” to the remaining 90 applicants.<sup>1</sup>

**{¶ 16}** The clarification request contained two parts: “criteria 1” and “criteria 2.” Criteria 1 required the applicant to submit a “facility-plot plan,” drawn to scale, that “designates the different areas of operation including the marijuana processing area, with mandatory access restrictions and the elements of [various provisions of the Administrative Code] delineated.” Criteria 2 required the applicant to “read, understand, and affirm a commitment to compliance with” the

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<sup>1</sup> Nearly all of the remaining applicants had failed to meet the minimum requirements under the security plan, and therefore the department focused on security in the clarification phase.

mandatory requirements set forth in the Ohio Administrative Code and sign a series of attestations to that effect.

**{¶ 17}** The department created new score sheets for the clarification request phase. On the new score sheets, applicants could receive a total of 20 points, which consisted of a possible 16 points for criteria 1, the facility-plot plan review, and a possible four points for criteria 2, the attestations. In order to satisfy the minimum requirements of the clarification request and be eligible for one of the remaining 26 licenses, an applicant had to obtain a minimum score of 60 percent of the total points, which equaled to a minimum score of 12 points out of the 20 possible points.

**{¶ 18}** A “frequently asked questions” brochure given to the applicants informed them that

[t]he security standards detailed in the regulations are very prescriptive. This means that facilities, to be compliant, must meet the detailed security requirements in order to receive a certificate of operations. There is very little room for a broad interpretation of these standards.

Record at Exhibit W.

**{¶ 19}** Ascension submitted a clarification application. It received all four points for criteria 2. Thus, to be eligible for licensure, Ascension needed to score at least eight points on the facility-plot plan outlined in criteria 1.

**{¶ 20}** The score sheet for the facility-plot plan contained eight separate criteria, each worth a total of two points. The criteria were derived from the requirements in the administrative rules. For the sake of consistency, the original security plan scoring team reviewed all of the facility-plot plans submitted as part of

the clarification process. The security team scorers assigned a numeric score for each applicant's facility-plot plan. The department then reviewed and calculated the applicant's new final score by adding the points awarded in both criteria 1 and 2 of its responses to the clarification response.

**{¶ 21}** After its review, the department determined that 29 of the applicants who submitted clarification requests met the minimum requirements to obtain provisional processor licensure. Those 29 applicants were ranked and the highest 26 ranked applicants were awarded licenses. Ascension was not one of the 29 applicants that met the minimum requirements.

**{¶ 22}** Specifically, the department awarded Ascension a total of ten points, with four points for the attestations and six points for the facility-plot plan. Thus, Ascension did not meet the minimum required score of 12 points necessary for the security plan narrative. Because of the deficiencies in its quality assurance plan, its original security plan, and its revised facility-plot plan submitted in response to the clarification request, Ascension was denied licensure. The department issued to Ascension a "Notice of Intent to Deny Application and Notice of Opportunity for Hearing," informing the entity that it did not meet all mandatory requirements for licensure as set forth under the program's rules.

**{¶ 23}** Ascension requested a hearing, a hearing examiner was assigned, and a hearing was held in August 2019. A member of the three-member review team that examined the security plan, a member of the three-member review team that examined the quality assurance plan, Ascension's chief executive officer, and the



department's director of licensing testified at the hearing. After consideration of the testimony and evidence, the hearing officer issued a report and recommendation in which he recommended that the department's decision be affirmed.

**{¶ 24}** Ascension objected to the hearing officer's report and recommendation. After consideration of the parties' stipulations, the hearing officer's report and recommendation, Ascension's objections, the transcript, and admitted exhibits, the department overruled Ascension's objections and adopted the hearing officer's report and recommendation as its final order denying Ascension a processor license.

### **Ascension's Appeal to Common Pleas Court**

**{¶ 25}** Ascension appealed the department's final order to the common pleas court under R.C. 119.12. Upon review of the case under R.C. Chapter 119, the trial court found that (1) the department did not wrongfully place the burden on Ascension, (2) the department did not improperly limit the scope of the evidence and issues, and (3) Ascension failed to demonstrate that it met the mandatory minimum requirements to qualify for a license. The trial court found that the department's decision was "not unconstitutional, illegal, arbitrary, capricious, unreasonable, nor unsupported by the preponderance of substantial, reliable, and probative evidence of the whole record." The trial court therefore affirmed the department's final order.

### **Assignments of Error**

**{¶ 26}** Ascension raises the following assignments of error for our review:

- I. The trial court erred as a matter of law by failing to identify the standard of review it applied in its Journal Entry.
- II. The trial court erred as a matter of law when it held that the Department of Commerce's Final Order was not illegal, arbitrary, capricious, or unreasonable.
- III. The trial court abused its discretion in holding that the Department of Commerce's Final Order was supported by a preponderance of reliable, probative, and substantial evidence.

## **Law and Analysis**

### **Trial Court used Appropriate Standard of Review**

{¶ 27} In its first assignment of error, Ascension contends that the trial court failed to identify the standard of review it used in reaching its decision and the case should be reversed on that issue alone. We disagree.

{¶ 28} Under R.C. 119.12, a trial court reviewing an order of an administrative agency must consider the entire record and determine whether “the order is supported by reliable, probative, and substantial evidence and is in accordance with law.” R.C. 119.12(M). The trial court must give due deference to the agency’s resolution of evidentiary conflicts. *Univ. of Cincinnati v. Conrad*, 63 Ohio St.2d 108, 111, 407 N.E.2d 1265 (1980). If the trial court finds that the order is supported by reliable, probative, and substantial evidence and is in accordance with law, the trial court must affirm the order. *Pons v. Ohio State Med. Bd.*, 66 Ohio St.3d 619, 621, 614 N.E.2d 748 (1993); R.C. 119.12(M).

{¶ 29} In its judgment, the trial court correctly noted that “this appeal is governed by R.C. Chapter 119” and that it reviewed “the entirety of the record.” After its review, the trial court found that the department’s decision was “not

unconstitutional, illegal, arbitrary, capricious, unreasonable, nor unsupported by the preponderance of substantial, reliable, and probative evidence on the whole record.”

**{¶ 30}** The above-quoted language from the trial court’s judgment demonstrates that it applied the correct standard of review. Ascension’s first assignment is without merit and therefore overruled.

### **The Trial Court did not Err by Placing the Burden of Proof on Ascension**

**{¶ 31}** For its second assigned error, Ascension contends that the trial court erred by placing the burden of proof on it. According to Ascension, it had the initial burden to demonstrate that it met the minimum requirements for licensure and once it met that burden, the burden shifted to the department to articulate the basis for denying its application. Ascension maintains that it met its initial burden, the burden then shifted to the department, and the department failed to meet its burden.

**{¶ 32}** Ascension cites cases and a statute in support of its burden-shifting contention. Upon review, the cases and statute are not helpful in addressing Ascension’s contention. For example, Ascension cites R.C. 1707.163(D). R.C. 1701.163 governs applications for a state retirement system investment officer’s license and does not set forth a burden-shifting scheme. Subsection (D) of the statute provides in relevant part that

[i]f the division finds that the applicant is of good business repute, appears to be qualified to act as a state retirement system investment officer, and has complied with this chapter and rules adopted under

this chapter by the division, the division, on payment of the fees prescribed by division (B) of section 1707.17 of the Revised Code, shall issue to the applicant a license authorizing the applicant to act as a state retirement system investment officer.

R.C. 1701.163(D).

**{¶ 33}** There is no burden-shifting scheme set forth in R.C. 1701.163(D).

**{¶ 34}** One of the cases deals with an application for a license to sell securities. *Fehrman v. Ohio DOC*, 141 Ohio App.3d 503, 751 N.E.2d 1089 (10th Dist.2001). To obtain such a license, the applicant needed to be of “good business repute” as set forth in the version of R.C. 1707.19(A) in effect at the relevant time and Ohio Adm.Code 1301:6-3-19(D)(7) and (9). On the applicant’s appeal to the trial court, the trial court stated that the agency met its burden of proving that the applicant was not of good business repute. *Id.* at 506.

**{¶ 35}** On appeal to the Tenth District, the court noted the “division of securities bears the burden of proving that an applicant is not of good business repute.” *Id.* at 507, citing *In re Scott*, 69 Ohio App.3d 585, 590, 591 N.E.2d 312 (10th Dist.1990). The case does not make any pronouncements about burden shifting and relates to a completely different issue than the one at hand.

**{¶ 36}** However, in a context similar to this case, the Tenth District held that an applicant for a medical marijuana cultivator provisional license has the burden at an administrative hearing “to demonstrate the department should have granted it the requested license.” *Solomon Cultivation Corp. v. Ohio Dept. of Commerce*, 10th Dist. Franklin No. 20AP-175, 2021-Ohio-46, ¶ 32, *appeal not accepted*, 163

Ohio St.3d 1418, 2021-Ohio-1606, 167 N.E.3d 973. “[I]t is fundamental to administrative law and procedure that the party asserting the affirmative issues also bears the burden of proof.” *Burroughs v. Ohio Dept. of Adm. Servs.*, 10th Dist. Franklin No. 12AP-522, 2013-Ohio-3261, ¶ 21, citing *Nucklos v. State Med. Bd.*, 10th Dist. Franklin No. 09AP-406, 2010-Ohio-2973, ¶17.

{¶ 37} Further, we note that in a case from this court similar to the within case, this court “emphasized that [it] need not consider [the applicant’s] argument \* \* \* that the board is required to provide reasons in support of its decision or that there is a burden-shifting standard within the statutory process.” *Buckeye Relief, L.L.C. v. State Bd. of Pharmacy*, 2020-Ohio-4916, 160 N.E.3d 767, ¶ 24 (8th Dist.).

{¶ 38} “Courts have held that a license applicant at an administrative hearing has the burden to demonstrate the department should have granted it the requested license.” *Lake Front Med., LLC v. Ohio DOC*, 11th Dist. Lake No. 2021-L-102, 2022-Ohio-4281, ¶ 10. The burden that rests upon the plaintiff, “to establish the material averments of his or her cause of action[,] \* \* \* never shifts.” *State ex rel. Hardin v. Clermont Cty. Bd. of Elections*, 2012-Ohio-2569, 972 N.E.2d 115, ¶ 23 (12th Dist.), citing 42 Ohio Jurisprudence 3d, Evidence and Witnesses, Section 84 (2012). Indeed, the RFA states that “[t]he burden of proving an Applicant’s qualifications to operate as a medical marijuana Processor rests solely on the Applicant.” It does not set forth a burden-shifting scheme.

{¶ 39} Ascension had the burden of proof and it never shifted. As will be discussed below, Ascension did not meet its burden of proof.

{¶ 40} The second assignment of error is overruled.

**No Abuse of Discretion in Trial Court’s Finding that the Department’s Final Order was Supported by a Preponderance of Reliable, Probative, and Substantial Evidence**

{¶ 41} In its third assignment of error, Ascension contends that the trial court abused its discretion in finding that the department’s final decision was supported by a preponderance of reliable, probative, and substantial evidence. According to Ascension, the department improperly “siloe” Ascension’s plans during its review. Ascension further contends that the department failed to score Ascension’s application according to its own scoring criteria.

{¶ 42} An appellate court’s review of an administrative decision is decidedly more limited than that of a common pleas court. *Pons*, 66 Ohio St.3d at 621, 614 N.E.2d 748. In *Pons*, the Ohio Supreme Court explained:

While it is incumbent on the trial court to examine the evidence, this is not a function of the appellate court. The appellate court is to determine only if the trial court has abused its discretion, i.e., being not merely an error of judgment, but perversity of will, passion, prejudice, partiality, or moral delinquency.

Absent an abuse of discretion on the part of the trial court, a court of appeals may not substitute its judgment for [that of an administrative agency] or a trial court. Instead, the appellate court must affirm the trial court’s judgment.

*Id.*

{¶ 43} Ascension first contends in this assignment of error that in both the initial and the clarification phases of the application process the department

“improperly siloed” the plans, meaning that it considered each plan separately to determine whether it met the minimum requirements. Ascension contends that this was improper and contrary to law because if the department had considered some of the evidence Ascension submitted in support of the other plans it would have met the minimum requirements.

**{¶ 44}** Three-person scoring teams reviewed each of the five section 2 plans and the teams reviewed only the content specific to their respective plan. The applicants were aware that the department would require them to meet minimum qualifications in each plan separately to be eligible for licensure.

**{¶ 45}** Specifically, both the Ohio Adm. Code and the Revised Code set forth the mandatory minimum criteria for each plan. *See* Ohio Adm.Code 3796:3-1-02(B)(2)-(6) and 3796:3-1-03(B)(1)-(5); R.C. 3796.03. The mandatory criteria for each section were included in “Table 1” of the RFA. The RFA also put the applicants on notice that “[t]he number of points after each heading is the maximum number of points that may be awarded for each of the corresponding components of the RFA. For each category, the applicant’s score will be based on the totality of the response to the corresponding RFA section.” This language put applicants on notice that the department would look at each plan separately.

**{¶ 46}** In reviewing Ascension’s quality assurance plan, the scoring team found that it failed to include the criteria specified in Ohio Adm.Code 3796:3-1-02(B)(4)(e), (f), and (h). Those provisions relate to the implementation and compliance with the inventory tracking system, an inventory control plan, and recall

policies and procedures. In reviewing Ascension’s security plan, the scoring team found that it failed to address all of the required elements set forth under Ohio Adm.Code 3796:3-1-02(B)(5)(a)-(d), which resulted in a score of zero.

**{¶ 47}** Pursuant to the notice set forth in the RFA, even if the missing information was elsewhere in Ascension’s application, because it was not set forth under the respective plan it constituted a failure to meet the mandatory minimum criteria for that specific plan.

**{¶ 48}** Ascension raised its “silo” argument at the administrative hearing. The hearing officer found the argument “to be without merit.” The officer reasoned that “[a]ll applicants were equally subject to the same review process and it was the applicant’s job to decide where in the application to place the needed information.” The hearing officer further reasoned that “it is certainly feasible that there could be ‘variations on a theme’ that would require similar information to be placed in more than one plan.”

**{¶ 49}** On this record, there was no improper “siloing” of the information in Ascension’s application. Ascension was on notice that each plan would be considered and scored separately.

**{¶ 50}** Ascension’s second contention in this assignment of error revolves around the department’s scoring of its application and is similar to its first “silo” contention. Ascension contends that the department erred by failing to consider the narrative portion of its prior security plan in scoring the facility-plot plan it submitted in response to the clarification request.



**{¶ 51}** A review of the clarification request demonstrates that applicants were advised that an applicant's prior plan would not be considered in the clarification phase, however. Specifically, the clarification request instructions provided as follows:

This request will supersede the original application instructions — and the score based on the clarification response will supersede any prior score — with regard to the Security Plan of the processor application. However, applicants will still be bound by any enhanced security features or other optional security elements described in their original applications.

(Footnote deleted.) Record at Exhibit N.

**{¶ 52}** Thus, the plain language of the clarification request notified applicants that their scores on the clarification request would supersede their prior score on the original section 2 security plan. Further, the clarification request instructed applicants that their submission needed to include specific code-required elements; specifically, a facility-plot plan of its processing facility, drawn to scale, that designates the different areas of operation and includes all “mandatory access restrictions and the elements of [specific] Ohio Administrative Code” sections.

**{¶ 53}** The record shows that Ascension submitted a facility-plot plan that was not compliant with the requirements. Ascension failed to include information detailing that (1) access control devices were in place to restrict access to medical marijuana products to only those individuals with proper credentials; (2) the waste disposal area is limited to only “Type 1” employees; (3) the exterior of the facility has adequate lighting; and (4) the disposal containers are locked to prevent

unauthorized access. Ascension also failed to include details regarding the location of the destruction area and an indication that the waste disposal area is limited to Type 1 employees.

**{¶ 54}** Ascension contends that the language in the clarification request instructions — “applicants will still be bound by any enhanced security features or other optional security elements described in their original applications” — supports its position that its prior security plan narrative would be considered in reviewing the new facility-plot plan. We decline to ascribe a substitute interpretation of that language. That Ascension would still be “bound by” previous requirements in its original application does not, without a specific statement, equate to those elements being part of the scoring system for the clarification request. Because the department was mainly concerned about security issues with the applicants who did not get licensure in the initial application phase, it would make sense that those applicants would “still be bound by any enhanced security features or other optional security elements described in their original applications.” But that language does not equate to a pronouncement that the original applications would be considered in the clarification phase.

**{¶ 55}** Further, the hearing officer considered Ascension’s argument. The officer noted that, although the clarification request specifically stated that the clarification scores would supersede the original scores, the request did not state that the materials submitted pursuant to the clarification request would supersede the original application materials. The officer admitted that the clarification request

could have “been clearer,” but nonetheless did not find that the clarification process was tainted. To that point the officer stated:

All applicants were required to provide attestations of compliance with several rule required elements which in some respects served as a substitute for the old narrative. Moreover, all applicants faced the same identical hurdles in the clarification process, and all were treated identically.

Hearing Officer’s Report and Recommendation, p. 26.

**{¶ 56}** Additionally, because the security plan Ascension submitted in the initial phase was deemed deficient by the department, it would seem nonsensical that the department would refer to it for scoring purposes during the clarification process.

**{¶ 57}** We are not persuaded by Ascension’s reliance on this court’s decision in *Buckeye Relief*, 2020-Ohio-4916, 160 N.E.3d 767 (8th Dist.), as ground for reversing the department’s decision. In *Buckeye Relief*, this court considered the applicant’s answer to a single question related to capital commitments on its application for a medical marijuana dispensary license from the Ohio Board of Pharmacy. The question was intended to determine whether an applicant had “adequate liquid assets to cover all expenses and costs for the first year of operation as indicated in the dispensaries proposed business plan.” *Id.* at ¶ 10. The applicant had to demonstrate that it had at least \$250,000 in liquid assets per dispensary it sought to open.

**{¶ 58}** The applicant submitted proposed proof of \$4 million in assets for a dispensary, a percentage of which was composed of bond pledges with “put options.”

*Id.* at ¶ 5, 11. “A put option permits bond holders the right to redeem the principal of the bond at any time before the bond matures.” *Id.* at ¶ 11. According to the applicant, the put options were redeemable in three, five, or seven days and, therefore, constituted a liquid asset.

**{¶ 59}** The board’s regional agent testified that he did not have sufficient knowledge or training to understand the applicant’s financial statements and therefore could not score the question. The hearing officer determined that due to the regional agent’s lack of knowledge and training, the applicant was given erroneously low scores by the regional agent and by other evaluators.

**{¶ 60}** After its review of the hearing officer’s report and recommendation, the board found that although the bonds were not immediately liquid the same as cash, they were nonetheless liquid, cash-like securities. Despite its finding, the board denied the applicant’s application for a license. On appeal, the trial court affirmed the board’s final order.

**{¶ 61}** This court considered the sole issue relating to capital commitments and the scorers’ lack of understanding concerning the put options on the applicant’s bond holdings. This court found that “[t]here clearly is evidence that the evaluators did not fully understand the nature of [the applicant’s] pledged capital. The scores given [to the applicant on the pertinent question] were demonstratively wrong and against the board’s own evaluation criteria.” *Id.* at ¶ 21.

**{¶ 62}** In light of the evidence, this court found that the “failure to correct a clearly erroneous score under the board’s own criteria equates to a legal error on the

board's behalf." *Id.* at ¶ 25. Thus, this court found that "the trial court abused its discretion by finding the board's decision to be in compliance with the law." *Id.*

**{¶ 63}** This case is distinguishable from *Buckeye Relief*. There is no evidence here, as there was in *Buckeye Relief*, to demonstrate that the scoring review teams did not understand or ignored the criteria in the scoresheets and in the administrative regulations. Indeed, in this case the hearing officer noted that he "found nothing conclusive that would lead to a change in score." There simply was no misapplication of the scoring criteria here as there was in *Buckeye Relief*.

**{¶ 64}** We reiterate that the scope of our review is very limited — we review to determine whether the trial court abused its discretion in determining whether the department's final order was supported by reliable, probative, and substantial evidence and was in accordance with law. *Pons*, 66 Ohio St.3d at 621, 614 N.E.2d 748.

**{¶ 65}** Our review demonstrates that the department's scoring decisions for each plan in Ascension's initial application are memorialized in the score sheets. Each scoring team used a standardized score sheet to evaluate each application and to assign scores to the individual plan narrative that the team evaluated, including the clarification request. The scores were the result of a consensus scoring process. Further, the score sheets delineated each of the mandatory criteria required for each plan and indicated which items were included and which items were omitted from Ascension's application. Additionally, at the hearing, the department's witnesses

were able to describe the meaning of each criterion in question on each score sheet and explain what responses the scoring teams were expecting for each criterion.

**{¶ 66}** The hearing officer found the department's witnesses to be credible in their explanation of the scoring team's conclusions regarding Ascension's application. Moreover, the hearing officer found nothing in Ascension's chief executive officer's testimony "that would lead to a change in score" with respect to Ascension's quality assurance plan.

**{¶ 67}** With regard to Ascension's score on the security plan narrative, the hearing officer further determined that the chief executive officer's testimony failed to "rise to the level which would demonstrate error on the part of the scorers." Giving due deference to the hearing officer's credibility determinations as we are required to do, *Univ. of Cincinnati*, 63 Ohio St.2d at 111, 407 N.E.2d 1265, we find that the record contains ample evidence to support the hearing officer and the department's conclusions that Ascension failed to meet the mandatory criteria necessary to be eligible for licensure.

**{¶ 68}** The trial court did not abuse its discretion in finding that the department's final order was supported by reliable, probative, and substantial evidence and was in accordance with law. The third assignment of error is overruled.

**{¶ 69}** Judgment affirmed.

It is ordered that appellee recover from appellant costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate be sent to said court to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

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MICHAEL JOHN RYAN, JUDGE

EILEEN T. GALLAGHER, P.J., and  
EMANUELLA D. GROVES, J., CONCUR